IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6022 OF 2005

Sukumar M. Khot & Ors. ...Petitioners.
Vs.
State of Maharashtra & Ors. ...Respondents.

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Mr. A. V. Anturkar with Mr. S.B. Deshmukh i/b. Ms. V.B. Shastri for the Petitioner.
Mr. Ravi Kadam, Advocate General with Mr. R.D. Rane, GP for Respondent Nos.1 to 3.
Mr. C.J. Sawant, Senior Advocate with Mr. P.D. Dixit for Respondent Nos.4 to 6.

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CORAM : F. I. REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

March 21, 2006.

JUDGMENT (Per Dr. D.Y. Chandrachud, J.) :

I

A declaration under Section 6 of the Land Acquisition Act, 1894, published in the Gazette on 23rd June 2005 is challenged in these proceedings under Article 226 of the Constitution. The acquisition is for the benefit of Sadashivrao Mandalik Kagal Taluka Sahakari Sakhar Karkhana Ltd., a Co-operative Society registered under the Maharashtra Co-operative Societies' Act, 1960, the Fourth Respondent to these proceedings.

The principal ground of challenge which was urged at the hearing is founded on the provisions of Section 5A, the challenge being that the Collector has neither prepared a report, nor submitted his recommendations as required by the mandate of the statute. After the records of the acquisition proceedings were produced before us by the Advocate General, we found that in the enquiry under Section 5A, the Fourth Respondent for whom the land is being acquired, submitted a chart containing its responses to the objections filed by the Petitioners. The principal objection that is emphasised is that the Co-operative Sugar Factory already has substantial land in its possession upon which a factory building and ancillary facilities have been created. Hence, the objection was that the lands which are being acquired are far in excess of the legitimate requirements of the Fourth Respondent. A perusal of the record has revealed that the Collector did not prepare any independent report of his own, nor did he submit any recommendations to the State Government as required by Section 5A. The Collector merely acknowledged the chart prepared and submitted by the Fourth Respondent containing the responses of the Fourth Respondent to the objections of the agriculturists whose lands are to be acquired. Based on the settled position in

law laid down in judgments of the Supreme Court, the most recent of them being the judgment in **Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai,** AIR 2005 SC 3520, we have concluded that there is a clear want of compliance with the mandate of Section 5A. Hence, the declaration under Section 6 will have to be set aside and the proceedings remanded back to the Competent Authority to conclude the enquiry under Section 5A in accordance with law upon which an appropriate decision can be taken by the State Government. We have, however, not accepted the contention of the Petitioners that the notification under Section 4 should be set aside since having regard to the law laid down by the Supreme Court, it is necessary only to set aside the declaration under Section 6 and to remit the matter.

II

2. By the acquisition proceedings which have been impugned before the Court by 74 agriculturists, lands admeasuring 54 Hectares and 16.30 Ares are sought to be acquired for the benefit of the Fourth Respondent from the villages of Hamidwada, Khadakewada and Kaulge in the Taluka of Kagal, in the District of Kolhapur. The Fourth Respondent is a sugar factory registered under the Maharashtra Co-operative Societies' Act, 1960, to whom

an industrial licence for the manufacture of crystal white sugar was issued by the Government of India under the Industries (Development and Regulation) Act, 1961. The Commissioner of Sugar approved the selection of the site on 8th August 1996. An application for acquisition is stated to have been moved by the Fourth Respondent before the State Government.

3. On 19th September 2003, an agreement was executed between the Fourth Respondent and the State Government, in pursuance of an application moved by the former for acquisition, under the Land Acquisition (Companies) Rules, 1963 for the purpose of erecting the Karkhana, for its allied purposes and to provide amenities to the shareholders and workers. The agreement recites that the State Government, on enquiry being made in conformity with the provisions of the Act and the Rules, had granted its consent to acquisition.

4. A Notification was issued under Section 4 of the Land Acquisition Act, 1894, on 20th November 2003 by which the lands were notified for acquisition for the following purpose viz.:

"The main factory building, school, college, spray pond,

vehicular stand, main office, distillery, co-generation project and other buildings."

A total of 59 Hectares and 64.74 Ares was sought to be acquired.

5. In response to the notices that were issued to the agriculturists, objections were raised on 6th December 2003, 19th December 2003, 5th April 2005 and 5th January 2004. At this stage, it would be necessary to note that one of the principal objections was that the Fourth Respondent was already in possession of lands that were more than sufficient to meet its requirements and that it was not necessary to, therefore, acquire the large area that was proposed to be acquired. One of the objections, a copy of which has been produced before the Court at Annexure A-5, specifically set up the plea that the Fourth Respondent had already purchased approximately 163 acres of land besides which an additional extent of 50 acres came to be acquired for which the revenue records had still to be mutated. Hence, it was submitted that the Fourth Respondent was not in need of any additional land for the purposes of its factory and other facilities. The notification under Section 4 stated that the lands have been acquired *inter alia* for the main factory building and it was the contention of the

objectors that the main factory building of the Fourth Respondent had already been constructed four years prior thereto and that the same position obtained in regard to the main Administrative Building. The objectors submitted that a vehicular stand and spray pond were already in existence and that 238 acres of land were already in the possession of the Fourth Respondent, of which only 40 to 50 acres had been utilised.

6. A declaration under Section 6 was issued on 23rd June 2005. That has led to the institution of these proceedings.

III

7. The Petitioners have inter alia averred that the Fifth Respondent, Sadashivrao Mandalik is a Member of Parliament belonging to the Nationalist Congress Party representing the Constituency in which the Fourth Respondent is situated and that the Sixth Respondent who is the Vice Chairman of the Karkhana is a member of the Legislative Assembly and presently Minister for State for Animal Husbandry and Dairy Development in the State Government. According to the Petitioners, the acquisition is in colourable exercise of powers and solely with a view to conferring a largese on the Fifth and Sixth Respondents. Besides this, it has

been submitted that the Petitioners had specifically raised the objection to the effect that the Fourth Respondent is in possession of 43 Hectares and 3 Ares of land in three villages, these being sufficient to meet the requirement of the Fourth Respondent. Moreover, it was submitted that the purpose of the acquisition is inter alia for the main factory building, the school, College, spray pond, main office, distillery, co-generation project etc.: of these, the factory has already become functional and the main building has already been constructed. Surplus land is available with the Fourth Respondent and photographs have been submitted to establish the existence of the existing constructions and facilities. Hence, it is submitted that the acquisition is a fraud on the power conferred upon the State. There was, it was submitted, non-compliance with the requirement of Section 40 of the Land Acquisition Act, 1894.

IV

8. In the reply that has been filed in these proceedings by the Sub Divisional Officer, on behalf of Respondent Nos.1 to 3, it has been stated that the Divisional Commissioner granted permission on 4th July 2003 for the acquisition of a total of 147.21 acres land and that the Collector in his turn allowed the SDO to proceed with the acquisition on 21st October 2003. An agreement

was stated to have been entered into with the Fourth Respondent by the State on 20th October 2003 “as per the provisions of Section 41 of the Land Acquisition Act, 1894, and the Land Acquisition (Companies) Rules, 1963, Rule 5 thereof.” Government, it was stated, had made a detailed enquiry under the Act and under the Land Acquisition (Companies) Rules, 1963, and that it was only after the scrutiny thereof that the Government was satisfied by the report submitted by the Committee as well as by the report of the Collector that acquisition proceedings should be initiated. The SDO in his reply admits that land has also been directly purchased by the Fourth Respondent from agriculturists and which has been utilised. However, it has been stated that the acquisition proceeding is “for various other allied activities that are mentioned in the agreement to run business more efficiently and make it viable for public activities and for well being of the people”.

9. An affidavit in reply has also been filed on behalf of the Fourth Respondent in which it has been stated that the Government has duly followed the procedure under the Land Acquisition (Companies) Rules, 1963 upon which an agreement was entered into with the State Government on 9th September

2003. The Fourth Respondent has admitted that it has purchased about 53.77 Hectares of land by private negotiations with the agriculturists situated in the three villages.

V

10. During the course of the hearing before this Court, the Advocate General appearing on behalf of the State adverted to the definition of the expression “Company” in Section 3(e). Sub Clause (iii) of Clause (e) is relevant for the purposes of the present proceedings and it provides thus :

> “The expression “company” means -
>
> ...
>
> (iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-operative society referred to in clause (cc);” (emphasis supplied).

Clause (cc) of Section 3 defines the expression “corporation owned or controlled by the State” and among the entities that have been included therein is “a Co-operative Society within the meaning of any law relating to Co-operative Societies for the time being in force in any State, being a Co-operative Society in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government or State Government ...”. A Co-operative Society of a description which falls under class (cc) of Section 3 is

specifically excluded from the definition of the expression "company" in sub-clause (iii) of Section 3(e). In the present case, the Advocate General has relied upon the statement contained in paragraph 35 of the affidavit filed on behalf of the Fourth Respondent in which it has been averred that the State Government has contributed 66.48% of the share capital of the Fourth Respondent. That being the position, the Advocate General submits that the Fourth Respondent does not meet the requirement of being a company within the meaning of Section 3(e)(iii) and that consequently Part-VII of the Land Acquisition Act, 1894 would not be attracted.

11. On the plain terms of Section 3(e)(iii), as it stands, a Co-operative Society of the description mentioned in clause (cc) of Section 3 is excluded from the definition of the expression "company". Inasmuch as the State Government has contributed more than fifty-one per cent of the paid-up share capital of the Fourth Respondent, the Fourth Respondent is not a company to which the provisions of Chapter VII could have applied. Hence, the arguments before the Court have proceeded further on the foundation that Part VII has no application.

VI

12. The submission which has been urged on behalf of the Petitioners is that there was a failure on the part of the Respondent-State to comply with the mandatory provision of Section 5A.

13. In order to appreciate the submission, it may be noted that under sub-section (1) of Section 5A, a person interested in any land which is notified under Section 4 is entitled to object to the acquisition of the land. The Collector is required by sub-section (2) to give the objector an opportunity of being heard. Thereafter, sub-Section (2) mandates that the Collector shall "after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under Section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government." (emphasis supplied). The decision of the appropriate Government on the objection is to be final.

14. The Collector is, therefore, under a duty to afford an opportunity of being heard to each objector. The Collector has to make a report to the appropriate Government containing his recommendations on the objections after hearing the objections and making a further enquiry as he thinks necessary. The furnishing of an opportunity of being heard, the hearing of objections, the making of the report by the Collector to the Government and the submission of his recommendations on the objections is not an idle formality. The statute mandates that this shall be done and the mandate of the statute has to be duly and punctiliously observed. The statute mandates that the Collector must make his report and the report has to contain the recommendations of the Collector. This is the plain meaning of sub-section (2) of Section 5A.

15. The importance of an enquiry under Section 5A cannot be over stated. In **Delhi Administration Vs. Gurdip Singh Uban,** AIR 2000 SC 3737, the Supreme Court noted that objections under Section 5A can relate to the contention that (i) The purpose for which the land is being acquired is not a public purpose; (ii)

That even if the purpose is a public purpose, the land of the objector is not necessary, in the sense that the public purpose could be served by other land already proposed or some other land to which the objector may refer; or (iii) That in any event, even if this land is necessary for the public purpose, in the special fact-situation in which the objector is placed, it is a fit case for omitting his land from the acquisition. The second objection is personal to the land, while the third is personal to the objector. Objections of the nature spelt out in (ii) and (iii) have a personal element which has to be pleaded in an enquiry under Section 5A.

16. The importance of an enquiry under Section 5A is underscored in several judgments of the Supreme Court. For the purposes of these proceedings, it would be apposite to recapitulate the principles that emerge from the decided cases:

-(i) Section 5A embodies a very just and wholesome principle to the effect that a person whose property is being acquired should have a reasonable opportunity of persuading the authorities that his property should not be acquired. (**Munshil Singh vs. Union of India**, AIR 1973 SC 1150);

-(ii) The limited right that is conferred upon an owner or a person interested to object to acquisition under Section 5A is a substantive right and not an empty formality. This right can be taken away for good and sufficient reason within the limitations prescribed by Section 17(4). (**Union of India vs. Mukesh Hans**, AIR 2004 SC 4307);

-(iii) An enquiry under Section 5A has an intrinsic connection with the requirement of fairness under Article 14 of the Constitution. Such an enquiry is, therefore, not merely statutory in nature, but has a constitutional component traceable to Article 14, a component which continues to subsist notwithstanding the deletion of the right to property as a fundamental right. (**State of Punjab vs. Gurdial Singh**, AIR 1980 SC 319 and **Om Prakash vs. State of U.P.,** AIR 1998 SC 2504);

-(iv) An opportunity of being heard is necessary for the individual to establish that the purpose for which the acquisition is sought to be made is not a public purpose. In addition thereto, the enquiry under Section 5A enables the individual to have an

opportunity to establish that even if a purpose is a public purpose, the acquisition of his land is not necessary or that in any event even if his land is necessary for a public purpose, the special facts which apply to him justify omitting the land from acquisition. (**Delhi Administration vs. Gurdip Singh Uban,** AIR 2000 SC 3737);

-(v) When an opportunity of being heard is expressly conferred by statute, the safeguards laid down by the statute must be scrupulously complied with. Sections 4, 5A and 6 have to be read together. The writ Court cannot refuse to grant relief where there has either been total or substantial non-compliance with the provisions of Section 5A. (**Hindustan Petroleum Corporation Ltd. vs. Darius Shapur Chenai,** AIR 2005 SC 3520);

-(vi) Section 6(3) renders a declaration once issued to be conclusive evidence that the land is needed for a public purpose. However, when the decision making process is in question, the power of judicial review can be exercised by the Court on grounds of illegality, irrationality and procedural impropriety. (**Hindustan Petroleum Corporation vs. Darius Shapur Chenai**, AIR 2005 SC 3520).

-(vii) The eventual decision is required to be taken by the appropriate Government, on objections, under sub-Section (2) of Section 5A. The State Government has a wide discretion to accept or to reject the report under Section 5A or to take an independent decision to continue or discontinue acquisition proceedings in respect of any particular land proposed to be acquired. "Wide the discretion may be, but not wild". (**BEML Employees House Building Coop. Society Ltd. vs. State of Karnataka**, (2005) 9 SCC 248). The exercise of all statutory discretion must be based on reasonable grounds and cannot lapse into arbitrariness or caprice which is anathema to the rule of law envisaged in Article 14 of the Constitution;

-(viii) The State Government has to apply its mind not only to the objections filed by the owner of the land, but also to the report which is submitted by the Collector upon making other and further enquiries and to the recommendations made by him in that behalf. The State Government may further enquire into the matter if a case is made out before it for arriving at its own satisfaction that it is necessary to deprive a citizen of his right to property.

(**Hindustan Petroleum** (supra) para 22).

17. These principles which have been enunciated by the Supreme Court in a consistent line of authority emphasise the importance of the enquiry under Section 5A. The finality which is attached to the decision of the appropriate Government on the objections under Section 5A(2) and the conclusiveness attached to the declaration under Section 6 on the existence of a public purpose only go to emphasise the substantive importance of an enquiry duly and properly held under Section 5A. The report of the Collector and his recommendations on the objections constitute a vital input that would enable the State Government to arrive at a decision as to whether the land should or should not be acquired.

VII

18. In the present case, records of the acquisition proceedings have been produced before this Court. As we have noted earlier, the Petitioners specifically sought to question the legitimacy of the acquisition on the ground that the Fourth Respondent was already in possession of sufficient land for the sugar factory and its allied activities and on the ground that a large part of the purpose for which the lands were notified under Section

4 had already been fulfilled by the construction of a sugar factory and its allied facilities. These objections were required to be considered by the Collector and the Collector was under a statutory obligation to make a report containing his recommendations on the objections. What happened in the course of the enquiry is evident from the compilation that has been placed before the Court by the State. A chart was generated by the Fourth Respondent in which the objections of the objectors were catalogued in one column. In the next column of the Chart, the responses of the Fourth Respondent as the body for whose benefit the acquisition is to take place were set out. That chart contains at its foot, an endorsement of the Executive Director of the Fourth Respondent. The Sub Divisional Officer and the Collector have marked their acknowledgment at the foot of the chart and for good measure it may be noted that there is a hand written endorsement above the signature of the Collector. This, in our view, does not fulfill the elementary requirement of Section 5A that it must be the Collector who prepares his report and that report must contain his recommendations on the objections to the State Government. The generation of a chart by the body at whose behest and for whose benefit the lands are being acquired containing its responses to the

objections is an input which must be taken into account by the Collector but it is quite a different thing for the Collector to say that this by itself would constitute the performance of his statutory duty before onward submission to the State Government. That would not meet the requirement of Section 5A and in any event we do not find any recommendations at all by the Collector. The Collector, therefore, failed to submit his report or for that matter his recommendations to the State Government. The Advocate General has informed the Court that apart from the aforesaid document (page 163 of the compilation tendered before the Court), there was no other report by the Collector.

19. In these circumstances, we are of the view that there was a breach on the part of the Collector in failing to comply with the mandatory provisions of Section 5A in that the Collector did not independently apply his mind to the objections that were submitted by the Petitioners. The Collector neither prepared his report, nor for that matter, did he submit his recommendations on the objections to the State Government. For and on behalf of the Respondents, it was submitted that the Collector had nonetheless submitted all the material which he had collected, to the State

Government and it was for the State Government to take the ultimate decision. That by itself will not cure the infirmity in the decision making process since the report of the Collector and his recommendations constitute vital elements in the process which lead up to the final decision of the State Government. The State Government has to apply its mind to the report of the Collector and to his recommendations and that indeed is a vital safeguard which is provided to the land owner whose land is being acquired. There has been thus, a failure to comply with the mandatory requirements of Section 5A.

20. We have perused the compilation of documents tendered before the Court on behalf of the State Government. As we have already noted, the notification under Section 4 was published on 20th November 2003. Publication at the village Chavdi took place on 30th June 2004. The compilation of documents contains largely correspondence prior to the notification under Section 4. Hence this correspondence does not establish that the Collector had upon the enquiry under Section 5A submitted a report or his recommendations. Among the documents is a letter sent by the Sub Divisional Officer on 23rd

July 2001 to the Executive Director of the Fourth Respondent in connection with the agreement that was proposed to be executed with the State Government under Section 40 of the Land Acquisition Act, 1894 (pages 13 to 15). On 6th June 2002, the Sub Divisional Officer addressed a letter to the Fourth Respondent noting that a preliminary enquiry had been held on 4th June 2002 and called for the responses of the Fourth Respondent upon which further steps would be taken (page 19). The Fourth Respondent addressed a letter to the Sub Divisional Officer on 3rd July 2002. On 6th July 2002, the SDO addressed a letter to the Collector stating that the Fourth Respondent has a total requirement of 255 acres of which 130 acres have been purchased by private negotiations and that the acquisition was proposed for 125 acres. The Sub Divisional Officer stated that he was submitting his preliminary report upon which the State Government should be moved for the issuance of a notification under Section 4. On 7th August 2002, the Collector addressed a letter to the SDO seeking to enquire as to whether genuinely an extent of 125 acres had to be acquired. On 14th August 2002, the SDO made an enquiry with the Fourth Respondent to which the Fourth Respondent replied by a letter dated 23rd August 2002. The Fourth Respondent inter

alia stated that the State Government held 66.48 percent of its share capital and that consequently a proposal for acquisition has been submitted by the Fourth Respondent. On 26th August 2002, the SDO addressed a letter to the Collector with reference to the proposal under Section 40 of the Land Acquisition Act, 1894. On 2nd September 2002, the Collector wrote to the Commissioner seeking guidance on the format in which the notification under Section 4 should be issued. There was a further exchange of correspondence between the Collector and the Commissioner (Sugar). The Commissioner (Sugar) granted his sanction on 24th April 2003 to the acquisition of land to the extent of 59.64 Hectares subject to certain conditions. On 16th May 2003 this was intimated to the SDO by the Fourth Respondent. The SDO on 27th May 2003 requested the Collector to submit the proposal to the Commissioner for further action which was done by the Collector on 7th June 2003. On 4th July 2003, the Commissioner wrote back to the Collector and on 14th July 2003, the Collector directed the SDO to initiate the acquisition process. This was followed by the agreement dated 9th September 2003 between the Government and the Fourth Respondent under Part VII of the Land Acquisition Act, 1894 and the notification dated 20th November 2003.

21. We have adverted to these documents in a considerable degree of detail and we have scrutinised the documents in order to satisfy the Court as to whether any report as required by Section 5A was prepared by the Collector with his recommendations. Plainly, the documentary material from pages 1 to 71 to the compilation relates to the period prior to the issuance of the notification under Section 4 and has no bearing on the question as to whether the Collector submitted his report on the objections that were raised in the enquiry under Section 5A together with his recommendations. The record shows that on 24th March 2005, a notice of the enquiry under Section 5A was remitted by the SDO to the Talathi. On 9th June 2005, the SDO submitted to the Collector a proposal for the issuance of a declaration under Section 6 together with the compilation containing the material collected in the enquiry under Section 5A. The Collector in turn wrote to the Commissioner, Pune Division on 13th June 2005 remitting inter alia to him all the papers including the chart that was generated in the enquiry under Section 5A. From the material that has been produced before the Court what emerges is the absence of the report of the Collector and the absence of the recommendations of

the Collector on the objections that were raised in the course of the enquiry under Section 5A.

22. As we have noted earlier, the State Government had initially proceeded on the basis that the procedure for acquisition in this case would be governed by Part VII of the Land Acquisition Act, 1894. Part VII, as the Advocate General conceded, is not attracted since the Fourth Respondent, being a Co-operative Society of the description referred to in clause (cc) of Section 3 would not fall within the definition of the expression "company" under sub clause (iii) of clause (e) of Section 3. That however, would not make a material difference to the existence of a public purpose. The expression "public purpose" is defined in Section 3 (f)(iv) to include the provision of land for a corporation owned or controlled by the State. The Fourth Respondent being a Co-operative Society of which not less than fifty-one percent of the paid-up share capital is held by the State Government is a corporation owned or controlled by the State under Section 3(cc). The Supreme Court held in **Pratibha Nema vs. State of M.P.**, (2003) 10 SCC 626, that the distinction between a public purpose acquisition and an acquisition under Part VII has now become

blurred under the impact of judicial interpretation. A public purpose is involved even in the acquisition of land for setting up an industry in the private Sector as it would ultimately benefit the people. The main distinction lies in the fact as to whether the cost of acquisition comes out of public funds wholly or in part, but here again even a token or nominal contribution of the Government has been held to be sufficient compliance with the second proviso to Section 6 of the Act in view of the decisions of the Supreme Court. In **State of West Bengal vs. Surendra Nath Bhattacharya**, (1980) 3 SCC 237, it was held that the test of a public purpose would be satisfied where the nature of the articles that were produced were such as to be utilised by the people in general, where a saving foreign exchange was caused and it was unmistakably for the general good of the country particularly from the economic point of view. Having regard to the well settled position in law, it therefore, cannot be contended that the test of the existence of a public purpose is not fulfilled in the present case. Plainly, a public purpose does exist.

23. Hence, we decline to accept the contention of the Petitioners that an invalidation of the notification under Section 4

must result. For one thing, as we have already noted, the existence of a public purpose cannot be disputed having regard to the settled principles of law as they emerge from decided cases. In a situation where there has been a failure to comply with the mandatory requirement of Section 5A, the ends of justice would be met by setting aside the declaration under Section 6 and directing that the Collector shall complete the enquiry under Section 5A in accordance with law. Upon the conclusion thereof, the Collector shall, as mandated by Section 5A, submit his report together with his recommendations to the State Government upon which it would be open to the State Government to arrive at a decision in accordance with law.

24. The petition, therefore, is allowed by quashing and setting aside the declaration under Section 6 dated 23rd June 2005. The proceedings shall stand remitted back to the Collector for completing an enquiry under Section 5A of the Land Acquisition Act, 1894 in terms of the directions issued earlier. The State Government shall upon the report of the Collector and his recommendations on the objections, be at liberty to take recourse to its powers in accordance with law. The petition shall stand

disposed of in the aforesaid terms. There shall be no order as to costs.

(F. I. Rebello, J.)

(Dr.D. Y. Chandrachud, J.)